

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

13 MAY 29 AM 10:34

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

MERCHANT CAPITAL, LLC, and )  
NEW SUNSHINE, LLC, )

Plaintiffs, )

v. )

MELANIA MARKS SKINCARE, LLC )

Defendant. )

CASE NO.

**1 : 13 -cv- 0873 JMS-DML**

NOTICE OF REMOVAL

Melania Marks Skincare, LLC ("Defendant"), by counsel, pursuant to 28 U.S.C. § 1441 hereby gives notice of the removal of this action from the Marion County, Indiana, Circuit Court to the United States District Court for the Southern District of Indiana, Indianapolis Division, and respectfully submits the following information in support of this removal:

1. Defendant is the sole defendant in a civil lawsuit filed in and presently pending in the Marion County, Indiana, Circuit Court captioned as *Merchant Capital, LLC and New Sunshine, LLC, Plaintiffs, vs. Melania Marks Skincare, LLC, Defendant*, Cause No. 49C01-1305-PL-016127 ("State Court Action").

2. Plaintiffs filed the State Court Action on May 2, 2013. Defendant was served with the Summons and Complaint by certified mail on May 7, 2013. This Notice of Removal is filed within thirty (30) days after service of the Summons and Complaint on the Defendant and is timely pursuant to 28 U.S.C. § 1446(b).

3. Copies of all process, pleadings, and orders received by the Defendant and filed on behalf of the Defendant in the State Court Action to date are attached hereto as **Exhibit A** pursuant to 28 U.S.C. § 1446(a).

4. This action is properly removable pursuant to 28 U.S.C. § 1441(a).

5. Pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction of this action because complete diversity exists between the parties, as follows:

(a) Plaintiff, Merchant Capital, LLC is a Wisconsin limited liability company, with its principal place of business in Eau Claire, Wisconsin. (Complaint, ¶ 1.) Upon information and belief, Menard, Inc. is the sole member of Merchant Capital, LLC. Menard, Inc. is a citizen of the State of Wisconsin.

(b) Plaintiff, New Sunshine, LLC is an Indiana limited liability company, with its principal place of business in Indianapolis, Indiana. (Complaint, ¶ 2.) Upon information and belief, the members of New Sunshine, LLC are MH Investors Sun, LLC and MH Investors Gaming, LLC, both of which are Indiana limited liability companies. The sole member of MH Investors Sun, LLC is MH Private Equity Fund, LLC, an Indiana limited liability company. The sole member of MH Investors Gaming, LLC is MH Private Equity Fund II, LLC, which is an Indiana limited liability company. The members of MH Private Equity Fund, LLC are Merchant Capital, LLC, whose sole member is a Wisconsin corporation, Menard, Inc., and MH Equity Managing Member, LLC, an Indiana limited liability company. Merchant Capital, LLC is a Wisconsin limited liability company. The members of MH

Private Equity Fund II, LLC are Merchant Capital, LLC, whose sole member is a Wisconsin corporation, Menard, Inc., and MH Equity Managing Member II, LLC, an Indiana limited liability company. Merchant Capital, LLC is a Wisconsin limited liability company. The sole members of both MH Equity Managing Member, LLC and MH Equity Managing Member II, LLC are either Stephen Hilbert and Tomisue Hilbert, both of whom are citizens of the State of Indiana, or Stephen Hilbert, a resident of the State of Indiana.

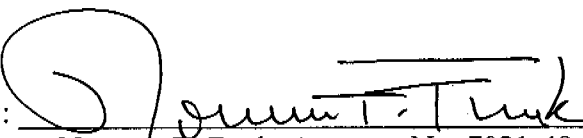
(c) Defendant, Melania Marks Skincare, LLC is a Delaware limited liability company, with an office in New York, New York. (Complaint, ¶ 3.) The members of Melania Marks Skincare, LLC are Melania Trump and Melania Marks Skincare Managing Member Corp. Melania Trump is a citizen of the State of New York. Melania Marks Skincare Managing Member Corp. is a citizen of the State of Delaware.

6. Defendant certifies based upon reasonable belief that Plaintiffs' Complaint satisfies the amount in controversy requirement of 28 U.S.C. § 1332 because there is a reasonable probability that the monetary damages at issue in this declaratory judgment action are in excess of \$75,000.00 from the alleged breach of contract entered into between the parties. Compensatory damages in the amount of \$50,000,000.00 plus punitive damages have been alleged in New York arbitration proceedings between the parties herein which involve the contract at issue in the case at bar. (Complaint, ¶ 18.) It is anticipated that counterclaims may be filed in the State Court Action, after removal to this Court, in excess of the sum or value of \$75,000.00.

8. Defendant is promptly filing a copy of this Notice of Removal with the Clerk of the Marion County Circuit Court, State of Indiana, as required by 28 U.S.C. 1446(d).

9. Venue for filing this Notice of Removal is proper in the United States District Court, Southern District of Indiana, Indianapolis Division, because this action is being removed from the Marion County, Indiana, Circuit Court.

KRIEG DeVAULT LLP

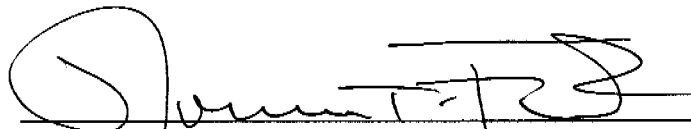
By:   
Norman T. Funk, Attorney No. 7021-49  
Libby Y. Goodknight, Attorney No. 20880-49  
Bryan S. Strawbridge, Attorney No. 29076-49

*Counsel for Melania Marks Skincare, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2013, a copy of the foregoing **Notice of Removal** was mailed, by first class United States mail, postage prepaid and properly addressed to the following:

Kevin C. Tyra  
Jerry M. Padgett  
THE TYRA LAW FIRM, P.C.  
334 North Senate Avenue  
Indianapolis, Indiana 46204

  
Norman T. Funk, Attorney No. 7021-49

KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204  
Phone: (317) 636-4341  
Fax: (317) 636-1507

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